IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is approved for reporting or not)

[Chapter VIII Rule 32 (2) (b)]

Description of the case.

Writ Petition No. 1321 (S/S) of 2003

Old Number

Writ Petition No. 5648 (SS) of 1996

Km. Shashi Thapa and another. .....Petitioner

Versus

State of U.P. and others. .....Respondents

Approved for reporting

Not approved for reporting

Date of decision May 09, 2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1321 (S/S) of 2003
Old Number
Writ Petition No. 5648 (SS) of 1996

1. Km. Shashi Thapa, aged about 40 years, D/o Sri Narain Singh Thapa, R/o Village – Gorakhpur, District – Nainital.
2. Smt. Deepa Bhatt Nee Deepa Joshi, aged about 34 years, Wife of Sri Akhil Chandra Joshi, R/o Bhimtal near Thana, P.O. – Bhimtal, District – Nainital.

…….Petitioners

Versus

1. State of U.P. through Principal Secretary, Uttarakhand Vikas, Civil Secretariat, Lucknow.
2. Teletronix Limited, Industrial Estate, Post Office – Bhimtal, District – Nainital.
3. The Commissioner, Kumaon Division, Nainital.
4. The Managing Director, Kumaon Mandal Vikas Nigam, Oak Park, Nainital.
5. The Deputy Director and Nodal Officer Janjati Vikas Kumaon Mandal, Nainital / Director Incharge, Teletronix Limited.
6. Director Social Welfare, Uttaranchal, Haldwani.

……Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri I.P. Gairola, learned counsel for the petitioner, Sri U.K. Uniyal, learned counsel for the respondent no. 4, learned standing counsel for State of Uttaranchal on behalf of respondent nos. 1, 2, 3, 5 and 6.

By means of this writ petition, the petitioners have prayed for following reliefs:

(a) to issue a writ order or direction in the nature of Certiorari to quash the appointment order dated 24th June, 1996 after summoning the original;

(b) to issued a writ, order or direction in the nature of Mandamus commanding the opposite parties to appoint the petitioners on Class III post in any government department within the Kumaon Division within a fixed reasonable time;

(c) to issue a writ, order or direction in the nature of Mandamus commanding the opposite party no. 2 to pay arrears of salary of the petitioners with effect from 1st April, 1996 till such date the petitioners are not suitably absorbed on the equivalent class III post in any other government department;

(d) to issue any other suitable order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case;

(e) to award the cost of the petition.

During the course of argument, learned counsel for the petitioners has prayed that he be permitted to delete Clause (a) and (c) of the prayer.

Permission granted to the learned counsel for the petitioners to delete clause (a) and (c) of the prayer during the course of the day.

The facts of the case are that after successfully completing one year training in the Organisation of telephone parts assembly petitioner no. 1 was employed in the Teletronix Limited i.e. respondent no. 2 vide order dated 03.03.1988 on the post of Assembler in the pay scale of Rs.

335 – 495. Petitioner no. 2 was also appointed vide order dated 13.08.1988 as Assembler in the pay scale of Rs. 335 – 495 with respondent no. 2. The post of Assembler comes within the category of Class III employee. The said pay scale was later on revised to Rs. 825 – 1200. Again the said pay scale has been revised with effect from 1996. On 30.12.1995, Government of U.P. issued notification for winding up of Teletronix Limited. The said notification is annexed as Annexure No. 4 to the writ petition. Subsequent to the decision of winding up of the aforesaid Company the Government also took a decision that the employees of Teletronix Limited would be absorbed in Kumaon Division in different Government Departments, Corporations etc. by granting them age relaxation for appointment. To provide employment to these retrenched employees in various departments the Government also freeze fresh appointment in different departments till the retrenched employees of Teletronix Limited are absorbed.

By the aforesaid order the Committee headed by Commissioner, Kumaon Division, was constituted for absorption of employees in different departments against the existing vacancies. Though the petitioners were eligible to be absorbed in Class III posts as per their qualification the Convener of the Committee i.e. Managing Director, Kumaon Mandal Vikas Nigam Limited forwarded the names of the petitioners for appointment against Class IV posts. The list of employees whose names were forwarded by the Managing Director for absorption in different departments as Class IV employee is annexed as Annexure No. 5 to the writ petition. The names of the petitioners find place at serial no. 9 and 15 in the aforesaid list.

The name of certain other employees having similar qualifications were recommenced for being appointed as Class III in different departments in Kumaon Mandal by the Managing Director. As a result of which, one Sri Jagat Singh Rajwan, who was appointed in the Teletronix Limited on 18.02.1989, possessing the same qualification has been appointed in the Education Department on Class III post.

In para 5 of the rejoinder affidavit filed by the petitioners, petitioners have submitted that Sri Pramod Kumar Pant and Sri Hemant Kumar Chandola, have been appointed in Class III post though they were appointed with Teletronix Limited after the appointment of petitioners. Thus, the respondents in arbitrary manner has provided appointment to the employees of Teletronix Limited, who were junior to the petitioner on the post of Class III Cadre whereas the petitioners who were senior to the aforesaid persons having same qualification have been provided appointment on Class IV post.

Petitioner no. 1 made representation on 27.07.1996 to the Commissioner, Kumaon Division. Similar representation was also made by petitioner no. 2 on 09.08.1996 requesting respondents to consider their case for appointment in Class III cadre.

Though the appointment order of the petitioners on Class IV post was absolutely illegal in view of the Government Order 30.12.1995 petitioners were compelled to accept the offer and joined their duties on Class IV posts.

Respondents assured the petitioners that the anomaly would be rectified and petitioners shall be absorbed against Class III posts, however, no action was taken by the

respondents and the petitioners were forced to file present writ petition.

No counter affidavit has been filed by respondents no. 1, 2, 3, 5 and 6. Respondent no. 4 has filed counter affidavit. The stand taken by the respondent in para 6 of the counter affidavit is that petitioners were not working on Class III post in Teletronix Limited. In para 7 of the counter affidavit, it is submitted by the respondent that no employee of Teletronix Limited, who were working on Class IV post, was given up employment as Class III and since the petitioners were working with Teletronix Limited as Class IV employee they were given appointment on the Class IV posts.

From Annexure RA 1 to the rejoinder affidavit, it is clear that Sri Pramod Kumar Pant was appointed with the Teletronix Limited as Assembler with effect from 01.012.1989 in the same pay scale on which the petitioners were appointed with respondent no. 2.

Petitioners have also filed general conditions of recruitment of different categories of posts as Annexure No. 3 to the writ petition. The said document provides that posts carrying the scale of pay with minimum of Rs. 175 or more but less than Rs. 449 per month (Old Scale), new scale Rs. 335 or more but less than Rs. 600 shall be treated as Class III employee.

From the document it is clear that the petitioners were appointed in the pay scale of Rs. 335 – 495 and Sri Pramod Kumar Pant was also appointed in the same pay scale even then respondents have absorbed Sri Pramod Kumar Pant in Class III posts and the petitioners have been provided

appointment on Class IV post though they were senior to Sri Pramod Kumar Pant.

From the perusal of the documents mentioned aforesaid, the argument advanced by the respondents that petitioners were working with respondent no. 2 as Class IV employee cannot be accepted.

Para 4 of the Government Order dated 30.12.1995 provides as under:

"छटनी ुदा कर्मचारियों को उनकी योग्यता के अनुसार कुमायूँ मण्डल में समकक्ष पदों पर समायोजन / पुनर्नियुक्ति दी जायेगीA"

As already stated above, since the respondents have already provided appointment on Class III posts to some of the persons mentioned above, who were working as Assemblers along with petitioner with respondent no. 2 and were juniors to the petitioners, the action of the respondents for providing appointment to petitioners on Class IV posts is absolutely illegal and in violation of Article 14 of the Constitution of India.

On 09.09.1996, the Allahabad High Court passed an interim order to the effect that in the meantime, it is directed that the representations of the petitioners as contained in Annexures 9 and 10 to this writ petition shall be disposed of by the Committee which was constituted under Government Order dated 30.12.1995 under the Chairmanship of Commissioner, Kumaon Division.

Learned counsel for the petitioners has submitted that the Chairman of the Committee has yet not taken any decision on the representations of the petitioners as directed by Allahabad High Court on 09.09.1996.

Learned counsel for the petitioners has submitted that the posts in Class III category are still vacant with respondent no. 6.

In view of the above discussion, writ petition is disposed of with a direction to respondents no. 3 and 6 to consider the case of the petitioners for appointment on Class III posts in view of the fact that juniors to the petitioners have been provided appointment in Class III posts, at the earliest preferably within a period of three months from the date of production of certified copy of this order. No order as to costs.

(M.M. Ghildiyal, J)

May 09, 2006
SKSharma